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CLERK

No. .....

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

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CORNET STORES, ET AL.,

PETITIONERS,

V.

AZIE TAYLOR MORTON, ET AL.,

RESPONDENTS.

SUPPLEMENT TO APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Robert Glenn White
One Market Plaza
Spear Tower, Suite 346
San Francisco, California 94105
Telephone: (415) 495-0488

Attorney for Petitioners

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1/ Rule 28.1 Corporate Relationships of parties provided in body of Petition for Writ of Certiorari, filed by mail on January 30, 1981.

FILED
AUG 18 1978

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY_____DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CORNET STORES, et al., Plaintiffs,	No.CV 77-4593-FW
v.	MEMORANDUM OF DECISION
AZIE TAYLOR MORTON, Treasurer of the United States, et al., Defendants.	

Plaintiffs in this action sue for the return of funds collected from them by Defendants acting pursuant to Presidential Proclamation No. 4074. Defendants have moved the Court to dismiss the complaint on the ground the Court

lacks jurisdiction of the subject matter.

As stated in United States v. Yoshida Int'l, Inc., 526 F.2d 560, 567 (CCPA 1976), the United States in the summer of 1971 faced an economic crisis brought about by a severe balance of payments deficit. In response to the crisis, the President issued Proclamation 4074 which declared a national emergency and imposed a surcharge in the form of a supplemental duty amounting to 10 per cent ad valorem on all dutiable articles imported into the United States. Less than five months later, on December 20, 1971, the President terminated the surcharge program by Presidential Proclamation No. 4098. While it was in effect, the responsibility for administering Proclamation 4074 was given to the Secretary of the Treasury and the Bureau

of Customs.

After paying the surcharges, many importers filed administrative protests, 19 U.S.C. §1514, challenging the President's authority to impose the surcharge program. In United States v. Yoshida Int'l, Inc., supra, the Court of Customs and Patent Appeals determined Congress had delegated to the President, under the provisions of the Trading With the Enemy Act /hereinafter the Act/, 50 U.S.C. App. §§1 et seq., authority to impose surcharges on imported dutiable goods. Accord, Alcan Sales v. United States, 534 F.2d 920 (CCPA), cert. denied, 429 U.S. 986 (1976).

Plaintiffs contend funds collected under the Trading With the Enemy Act cannot be withheld from one possessing an interest in them who is neither an

enemy nor an ally of an enemy of the United States. Under the provisions of §9(a) of the Trading With the Enemy Act, 50 U.S.C. App. §9(a), a claimant may institute a suit in equity in the District Court to establish any right claimed in money conveyed to the Alien Property Custodian and held in the Treasury of the United States.

Plaintiffs contend that this Court has jurisdiction over the subject matter of their claim. Such contention is without merit. Claims arising from the surcharge program lie within the exclusive jurisdiction of the Customs Court. Henry Pollak, Inc. v. Blumenthal, 444 Fed.Supp. 56, 59 (D.D.C. 1977).

The Trading With the Enemy Act was originally enacted in 1917 to prohibit trade with wartime enemies. It author-

ized the President to seize enemy owned property, administer it for the benefit of the United States, and dispose of it as Congress might direct. During the economic crisis of the 1930's, Congress selected §5(b) of the Act, 50 U.S.C. App. 5(b) as the foundation upon which to fashion a broad delegation of peacetime regulatory power over the economy to the President. In 1941 §5(b) of the Act was amended to permit flexible control of transactions in foreign property by the President. 1941 U.S. Code Cong. Serv. at 1031. Among other things, the amendment allowed him to 'regulate' the 'importation' of 'any property' in which 'any foreign country' had 'any interest'. Id at 940./ By these amendments Congress transformed a wartime measure into a customs law which could be used to regulate importa-

tion by imposing an import duty surcharge. See United States v. Yoshida Int'l, supra, 526 F.2d at 573, 576.

Congress has provided that jurisdiction over claims arising from the customs laws rests exclusively with the Customs Court. 28 U.S.C. §1582(a). As stated in J.C. Penney Company v. United States Treasury Dept., 439 F.2d 63, 65 (2d Cir. 1971), "the Customs Court shall have 'exclusive jurisdiction' of all civil actions challenging an administrative decision, 'including the legality of all orders and findings entering into the same,' when that decision involves, inter alia the . . . rate and amount of duties chargeable, all charges or extensions within the jurisdiction of the Secretary of the Treasury . . . under any provision of the custom laws."

Whether the import duty surcharge was properly imposed or should be returned to the importers from whom it was collected raises an issue of substantive customs law. For this Court to assume jurisdiction of the present action, therefore, would erode the Congressional design for a "complete system of corrective justice with respect to matters arising under the customs laws." Cottman Co. v. Dailey, 94 F.2d 85, 88 (4th Cir. 1938).

Thus, §9 confers no jurisdiction upon this Court as to matters herein involved. "Congress clearly intended §1582(a) to prevail over any broadly-worded statutes which . . . might appear to grant concurrent jursidiction over customs matters to the district courts." Fritz v. United States, 535

F.2d 1192, 1194 (9th Cir. 1976). By the same reasoning, Plaintiffs may not rely on 28 U.S.C. §§1331, 1337, 1361, 1391(e) as alleged in the complaint.

Thus it appears the motion of Defendants to dismiss should be granted. The Court will render judgment dismissing the action, but no judgment shall be entered until the Court has signed its formal judgment.

DATED this 18 day of August, 1978.

FRANCIS C. WHELAN
UNITED STATES DISTRICT JUDGE